



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XA690]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the South Quay Wall Recapitalization Project, Mayport, Florida

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: NMFS has received a request from the United States Navy (Navy) for the re-issuance of a previously issued incidental harassment authorization (IHA) with the change being a modification to the effective dates. The initial IHA authorizes take of one species of marine mammal, by Level B harassment only, incidental to pile driving associated with the South Quay Wall Recapitalization Project, Naval Station Mayport, Florida. The project has been delayed and none of the work covered in the current IHA has been conducted. The Navy has requested the IHA be re-issued with the following effective dates: January 1, 2021, through December 31, 2021. The scope of the activities and anticipated effects remain the same, authorized take numbers are not changed, and the required mitigation, monitoring, and reporting remains the same as included in the initial IHA. Therefore, NMFS re-issued the IHA.

DATES: The authorization is effective from January 1, 2021, through December 31, 2021.

ADDRESSES: An electronic copy of the original and re-issued IHAs, the Navy's application, and the **Federal Register** notices proposing and issuing the previous and new IHAs may be obtained by visiting <https://www.fisheries.noaa.gov/action/incidental->

take-authorization-south-quay-wall-recapitalization-project-naval-station-mayport. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On July 26, 2019, NMFS issued an IHA authorizing take of marine mammals incidental to the Navy’s South Quay Wall Recapitalization Project, Mayport, Florida (84 FR 37841; August 2, 2019). The effective dates of that IHA were February 15, 2020 through February 14, 2021. On December 2, 2019, the Navy notified us that the project was delayed and requested we reissue the IHA with effective dates of July 1, 2020 through June 30, 2021, which we did on February 18, 2020 (85 FR 10153, February 21, 2020). However, on September 25, 2020, the Navy indicated the project was further delayed and none of the work considered under the original IHA has occurred; thus, they requested the IHA be re-issued again with new effective dates. The effective dates of this third IHA do not extend beyond one year from the effective dates of the initial IHA. The new effective dates are January 1, 2021 through December 31, 2021. NMFS has issued a new IHA with modified effective dates.

Summary of Specified Activity and Anticipated Impacts

The purpose of the Navy’s construction project is to support the existing bulkhead wall that has been weakened by the formation of voids within the wall, by constructing a new bulkhead immediately seaward of the existing bulkhead. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous IHAs. The authorized incidental take and anticipated impacts on the affected stocks are the same as those analyzed and authorized through the

previously issued IHAs. The mitigation, monitoring and reporting measures are also identical to those prescribed in the previous IHAs.

The only species of marine mammal expected to be taken by the planned activity is the bottlenose dolphin (*Tursiops truncatus*). The data inputs and methods of estimating take are identical to those used in the initial IHA. As such, the manner and amount of authorized take in the reissued IHA is identical to that in the initial IHA. NMFS has reviewed recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our initial analysis of impacts or take estimate under the previous IHAs.

We refer to the documents related to the previously issued IHAs, which include the **Federal Register** notice of the issuance of the initial IHA for the Navy's construction work (84 FR 37841, August 2, 2019), the Navy's application, the **Federal Register** notice of the proposed IHA (84 FR 23024, May 21, 2019), the **Federal Register** notice of issuance of the second IHA (85 FR 10153, February 21, 2020), and all associated references and documents.

Determinations

The Navy will conduct activities that have impacts equal to those analyzed in the previous IHAs. As described above, the number of authorized takes of the same species and stocks of marine mammals is identical to the number that we found met the small numbers standard for issuance of the initial and subsequent IHAs. There are no changes to the status of the stock or the conditions under which the taking would occur. Further, the re-issued IHA includes identical required mitigation, monitoring, and reporting measures as the initial IHA. For the initial and subsequent IHAs, NMFS found the authorized take would result in a negligible impact to the affected stocks of bottlenose dolphins. No new information has emerged that would suggest we should change or analysis or findings.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) the Navy's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action with respect to environmental consequences on the human environment.

Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review. This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Because the only change to the IHA are effective dates, the CE on record for issuance of the initial IHA applies to this action.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or

carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species. No incidental take of ESA-listed species is anticipated or authorized in the IHA as none occur in the action area. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Authorization

NMFS has issued an IHA to the Navy for in-water construction activities associated with the specified activity effective January 1, 2021, through December 31, 2021. All previously described mitigation, monitoring, and reporting requirements from the initial and second IHA are incorporated.

Dated: December 9, 2020.

Donna S. Wieting,
Director, Office of Protected Resources,
National Marine Fisheries Service.